IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 799 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DALPATBHAI CHATRABHUJBHAI MAKADIA & 10 - Petitioner(s)
Versus
DISTRICT REGISTRAR & 1 - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Petitioner(s) : 1 - 11.
GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 08/03/2006

ORAL JUDGMENT

1.The present petition is preferred by the petitioners for challenging the order dated

25.10.2004 passed by the District Registrar whereby, the custodian is appointed under Section 74D of the Gujarat Co-operative Societies Act (hereinafter referred to as the ”Act”).

2.It appears that in the petition, the interim injunction was granted by this Court on 11.02.2005 and it has been stated by Mr. Pahwa, learned counsel for the petitioners that the body which is being represented by the petitioners, has continued and the custodian has not taken over the charge. He further states that the petitioners have no objection if a fresh election is to be held by the petitioners under the supervision of the officer who may appointed by the District Registrar.

3.He further states that if this Court is so inclined, the petitioners shall hold the election afresh and complete the process on or before 26.03.2006.

4.It appears that the powers were exercised by the District Registrar under Section 74D of the Act on the ground that there were two parallel claims of two groups having been elected as the members of the Managing Committee and, therefore, the District Registrar had appointed the custodian under Section 74D of the Act.

5.It appears that considering the facts and circumstances, if election of the members of the Managing Committee is held afresh under the supervision of any officer who may be nominated by the District Registrar, not below the rank of the Assistant Registrar, there will not be any dispute of genuineness of the election and the body which may be having genuine majority at the election, can assume the office and a fresh mandate of the electorate, can be taken. The principal object and exercise under the powers of Section 74D of the Act is to see that the elected body, if not available, the vacuum may not be created and the custodian can be

appointed. Now in the present case, as declared by the learned counsel for the petitioners, there is also willingness on the part of the petitioners to face election, the same can be permitted and the whole issue of appointment of the custodian can be avoided, so far as the future period is concerned.

6. In view of above, it is directed that as declared by the petitioners, the election of the members of the Sajdiyali Seva Sahkari Mandli Ltd., shall be held by the Society under the supervision of the officer who shall be nominated by the District Registrar, Rajkot, not below the rank of the Assistant Registrar and such process of election shall be completed on or before 26.03.2006. It is further directed that the petitioners or any other person claiming to have been elected on 09.06.2004, shall entrust the management of the society to the newly elected body. Until the election is held and newly elected body assumes the office,

the status quo as prevailing on today, shall be maintained. After the election is held and newly elected body assumes the office, the order for appointment of the custodian will not survive.

7. Petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly. No order as to cost. Direct service is permitted.

(JAYANT PATEL, J.)

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